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THE COMMONWEALTH.

SPEECH
OF
Hon. W. L. UNDERWOOD,
OF KENTUCKY.

Against the admission of Kansas as a State under
the Lecompton Constitution. Delivered in the
House of Representatives, March 30th, 1858.

[CONCLUDED.]

In addition to this I present you the authority of Mr. Buchanan the present distinguished Chief Magistrate of the United States, whose early counsels are so worthy of the consideration of his later years, and who, upon the occasion of the admission of Michigan, expressed himself in the following emphatic language:

"We ought not to apply the rigid rules of abstract political science too rigorously to such cases. It has been our practice heretofore to treat our infant Territories with parental care, to nurse them with kindness, and when they had attained an age of manhood to admit them into the family without requiring from them a rigid adherence to forms. The great question to be decided are: Do they desire to be admitted? Have they adopted a Republican Constitution? And are they willing to enter the Union upon the terms which we propose? If so, all the preliminary proceedings have been considered but mere forms, which we have waived in repeated instances. They are but the scaffolding of the building, which is of no further use after the edifice is complete. We have pursued this course in regard to Tennessee, to Arkansas, and even to Michigan. No Senator will pretend that their Territorial Legislatures had any right whatever to pass laws enabling the people to elect delegates to a convention for the purpose of forming a State Constitution. It was an act of usurpation on their part."

And on the same subject, Mr. Calhoun, the brightest constitutional luminary of all, used the following brief but emphatic words:

"My opinion is, and ever was, that the proceeding of the people of Michigan, in taking the first steps to form a State Constitution, was waiting for the action of Congress, was revolutionary."

If these quotations fail to convince, then, so far as my Democratic auditors extend, they need not be convinced though one rose from the dead. But to obviate these high authorities and these unanswerable arguments, it is now stated that the Kansas Nebraska act is itself an enabling act, dispensing with all others. Unfortunately for those who affirm this, it proves too much for them. That act, it is true, "leaves the people perfectly free to form their domestic institutions in their own way, subject only to the Constitution." Prior to it the people had been restrained in this "perfect freedom" by the provisions of the Missouri compromise line, which prohibited slavery north of 36° 30' north latitude; and this provision was intended merely to apply to the condition and privileges of the people when subsequent to the repeal of this line they should come legally to form their domestic institutions in their own way, and was not intended to confer upon them any new powers or privileges, contrary to the consent of Congress, whereby they might at pleasure cast off their territorial allegiance. If such be not the true interpretation of this clause—if it conferred upon the people of the Territory the inherent right at any time they pleased to form a Constitution and claim admission absolutely under it, how can we resist the application of those who formed the justly and universally repudiated Topeka Constitution for admission under it into the Union of these States. Their Constitution is first in point of time, and it will be observed that not the Legislature of the Territory, but the "people of the Territory," are left "perfectly free to form their own domestic institutions in their own way."

Once, upon this hypothesis and language of the law, we need not apply for an enabling act even from the Territorial Legislature, because that language does not confer the power upon the Legislature, but confers it "on the people;" and the high prerogative of making a Constitution is not a legislative function. Besides, if the Kansas Nebraska act enabled the Legislature of Kansas to call a constitutional convention, why did President Pierce recommend, and why did the Democratic Senate under his Administration, with singular unanimity, pass an act authorizing Kansas to call a convention. Without pursuing this argument further, I conclude, from the high authorities cited and from the reasons already adduced—that the Legislature of Kansas was not competent to commit an act of political suicide, and to subvert and overturn the very power of which they were but conscious keepers, guardians, and preservers, by the Congress of the United States; and that, as the Kansas territorial law was in no sense an act which enabled its Legislature thus to subvert the territorial existence at its pleasure.

It follows, then, that the Lecompton Constitution is not an imperative law. That it can not challenge and demand our implicit and unquestioning submission, because it is not accredited to us by all the regularities and forms of law. But losing these high pretensions, which are all the title that it brings, it loses all. For, unless it can be sustained upon the ground of legitimacy, it has no other foundation to sustain it.

Mr. Chairman, let it not be inferred from anything I have said that I hold it illegal or rebellious for a Territorial Legislature to institute preliminary proceedings in order to bring about the transition from a territorial to a State condition. All I wish to establish is that their proceedings bind not the government of the United States, or render it in any sense imperative upon such government to admit such Territory into the Union as a State, merely because the Territorial Legislature have gone regularly through the formalities it may have instituted. The power of the United States, and the duty of the United States, stand untouched and unaffected by these subordinate territorial formalities, except so far as they may address themselves to the Congress of the United States as matter of petition, deserving its favorable consideration from their inherent merit, and not from their inherent legitimacy.

2. If the Lecompton Constitution be legal in form, are there not facts connected with it that render it invalid in fact? Mr. Chairman, this field of my argument has been perfectly exhausted. Let me add but a few words to what has been so much better said by so many others. And let me premise that the Congress of the United States is under no stress, or legal or political necessity, to admit new States into this Confederacy. Neither Kansas nor any other Territory, can demand as a right admission into this Union; although she may have formed a Republican Constitution, and although every man, woman and child within her borders desired it, yet the right and the power to admit or not to admit, according to their own will and pleasure, rests alone in the Congress of the United States.

This high power and unlimited discretion is expressed in the Constitution of the United States in these simple words: "New States may be admitted by the Congress into this Union." In the exercise of this high prerogative, perhaps the most morally grand of any which our country history exhibits, the Congress has the right and it is its duty, to look with the utmost scrutiny and caution upon every fact, circumstance, and condition which bears upon the prudence, fitness, and propriety of the permanent relation it is about to establish between the new comer into the Confederacy and the old; and if there be any time and any act which, above all others, should demand the exercise of the utmost good faith, forbearance, and honesty, it is this. I do not hesitate to declare that, if new States are to be precipitated into this Confederacy contrary to the consent of a material portion of the old ones, and above all, with constitutions contrary to the asserted will of a material portion of the citizens of such new State, then are the sappers and miners at work beneath the foundations of the Republic, and the enemy to its perpetuation has entered within its walls.

Mr. Chairman, if we could for a moment relieve ourselves of all party bias and excitement, we should find the facts pertaining to the Kansas question to be few and simple. A portion of its people are in favor of a Constitution with slavery; another portion is in favor of a Constitution without it. For years they have been waging a disreputable contest, disturbing the quiet and repose of the Union, and seeking political advantages of each other. Both of these parties have made themselves a Constitution—one at Topeka, relying for its support upon your naked doctrine of Popular Sovereignty; the other at Lecompton, relying upon popular sovereignty, endorsed by Legislative intervention without congressional sanction. The latter is much the best of the two, but both are bad. Each party has endeavored, as far as possible, to ignore the other and to refrain from a recognition of the legal validity of its acts. The free State party believed it was outraged and trodden down by an invasion from Missouri, which gave despotic character to the Legislature, inasmuch as it was elected, not by the people of the Territory but by alleged invaders, and hence, thereafter, it abstained from participating in elections authorized by this Legislature. Whilst the slave State party denied the extent of the force and violence charged by their opponents, and justified themselves by the charge that emigrant aid societies had thrown upon Kansas, for the purpose of controlling its domestic institutions, a population as spurious as any introduced from adjacent States.

Thus waged the war, until delegates were authorized to be chosen by the Territorial Legislature from the Territory, preparatory to the admission of Kansas into the Union. From this point onward we have a right, and it is our duty, to look, in order to ascertain what it is proper for us to do. Delegates under the law were to be appointed among the thirty-four counties of the Territory according to their population, to be ascertained by a census directed to be taken. This was fair and right, and ought to have been done; but we may believe the very highest authority on this subject, it was not done, and by reason of the failure nearly one-half of the counties of the Territory were denied any representation in the convention that formed the Constitution under which they were to live. Hear what Gov. Walker and Secretary Stanton say on this subject—Gov. Walker, in his letter to Gen. Cass, of the 10th Dec., 1857, says:

"In nineteen of these counties there was no census, and therefore there could be no such apportionment of delegates, based upon such census; and in fifteen of these counties there was no registry of voters. . . . The result of the census, as far as the organized counties of the Territory, were entirely disfranchised, and did not give, and (by no fault of their own) could not give, a solitary vote for delegates to the convention."

"In fifteen counties out of thirty-four there was no registry, and not a solitary vote was given or could be given for delegates to the convention in any of these counties."

Governor Stanton, in corroboration of this statement, in his address to the people of the United States, says:

"The registration required by law had been imperfect in all the counties, and had been wholly omitted in some. . . . The result of the census, as far as the organized counties of the Territory, were entirely disfranchised, and did not give, and (by no fault of their own) could not give, a solitary vote for delegates to the convention."

I could multiply proofs on this subject, but it is unnecessary. These are sufficient, except to those determined not to believe. It is true that many of the free State party refused to vote for delegates to form the Constitution. They professed to believe, and perhaps did believe, they would be defrauded out of their votes by their opponents, who had complete control of all the machinery by which the elections were to be conducted; and they were unwilling, as before stated, by voting at an election authorized by what they denominated the Bogus Legislature, to recognize the validity of its acts. I am not their advocate or defender. I think in all this they did wrong; and the other side were wrong in not taking the census and registration as far as practicable, to give to all the right and unquestionable American privilege of being represented in the body which was to ordain their highest law. The free State party in some of the counties made an attempt to elect delegates to the convention, notwithstanding the failure to take the census and registration. Their delegates were rejected. I will not dwell on these things. One fact of importance, during the progress of this election, occurred. It was the equivocal, clear, distinct, and absolute promise of the Governor, in his own name, and in the name of the President of the United States; it was the promise of Mr. Stanton; it was the promise of Mr. Calhoun and many of his associates, that the Constitution, when formed by the convention, should be submitted to the people for their ratification or rejection.

Governor Walker, everywhere in Kansas, pledged his honor, by the approval, as he told the people, of the President and his cabinet, that the Constitution should be submitted. Without stopping to refer to his inaugural, in which he is most emphatic on this point, I read from a speech of his delivered at Topeka, on the 8th of June, 1857, and published in the Topeka Statesman of the 9th:

"At the next election, in October, when you elect the Territorial Legislature, you can repeat these laws, and you can also, by a majority of your own votes, adopt or reject the Constitution presented for your consideration and ratification. Can you not necessarily decide upon the mode pointed out by the act of Congress, if you, as you can and will, have a full opportunity of record? (A voice, How can we do it?) You will get it by the convention submitting the Constitution to the vote of the whole people. (A voice, Who is to elect the convention?) That is the grand question. Gentlemen, it is a comparatively small point by which the Constitution is submitted. Don't let us run away after shadows. The great substantial point is this: Will the people of Kansas vote for the Constitution, or will they not? The people of Kansas, I repeat, will vote for the Constitution, or will they not? (A voice, Have you the power?) If I have not the power, I will not use it. (A voice, How can we do it?) 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